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Coggeshall, Edwin Walter

Land transfer reform bills (passed by Senate...

[New York]

[April 26, 1886]

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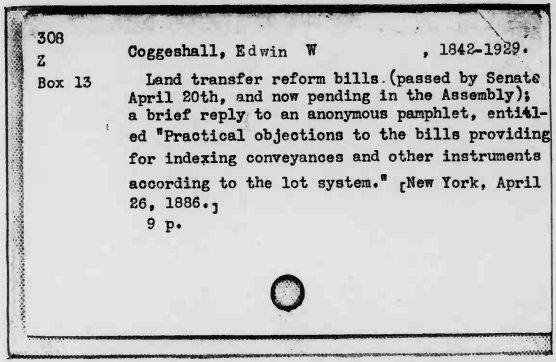

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Coggeshall, Edwin W , 1842-1929.

Land transfer reform bills.(passed by Senate April 20th, and now pending in the Assembly); a brief reply to an anonymous pamphlet, entitled "Practical objections to the bills providing for indexing conveyances and other instruments according to the lot system." [New York, April 26, 1886.]
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LAND TRANSFER REFORM BILLS,

(Passed by Senate April 20th, and now pending in the Assembly.)

A BRIEF REPLY

TO

AN ANONYMOUS PAMPHLET,

ENTITLED

"PRACTICAL OBJECTIONS TO THE BILLS PROVIDING FOR INDEXING CONVEYANCES AND OTHER INSTRUMENTS ACCORDING TO THE LOT SYSTEM."

It was said by a gentleman eminent at the bar, of long experience in real estate practice, and thoroughly conversant with the lot system, that, after reading another pamphlet on this subject by a gentleman of good standing at the bar, but of little if any practical experience as a conveyancer, there came to his mind that passage in the Book of Job: "Who is this that darkeneth counsel by words without knowedge?"

If appropriate in that case the passage is certainly still more appropriate in the case of the anonymous pamphlet under consideration, whether as a question of authorship or as a characterization of the pamphlet itself, for it will appear that the author is not even familiar with the lot system bills, and has not apparently ever read those bills as now pending before the Legislature.

Is it not suggestive also that the author of "Practical objections" should prefer to present his views anonymously and blush unseen?

It is well known, all statements to the contrary notwithstanding, that while no representative of the Title Guarantee and Trust Company has signed a memorial in favor of

the lot system, that such a representative *has signed* a protest against its introduction and it is stated that the Title Company has had a representative at Albany to oppose the bills. It is understood that some of the tax searchers, disinterestedly and in the interest of economy are also participating in the opposition to the lot system.

Certainly any objections emanating from the Title Company or tax searchers to measures which would enable real estate lawyers to compete with the former and would relieve them from the excessive charges of the latter, would be in the highest degree "practical."

Is it because this pamphlet is inspired by one or both of these opponents that it is anonymous?

The first objection in the anonymous pamphlet is that there are no tax maps of a part of the 24th Ward—or about one-third of the annexed district—and that there are no plain, acknowledged boundaries of blocks in that district.

If this objection were in all respects well founded it would be an objection to the *block* as well as to the *lot* system, or, in other words, to any system of local indexing, and would deny to the owners of five-sixths of the property in New York City the benefits of a local index, because such an index could not be at once used as to the other one-sixth.

But here we come to the first instance of "words without knowledge."

The bill of the majority of Commissioners provides by Sec. 14 for an alphabetical index of such real property "as shall not be embraced within the bounds of any lot or block or plot on the Land Register."

And this section was drawn to meet such facts as are stated in the first objection. We need not stop to notice such of the statements in that objection which are not facts.

The next objection is the confused condition of the tax maps which is so great, that the "*tax searchers who spend their lives with those books* sometimes are unable to decide what the lot number is." Now if the anonymous author had spent sufficient time to read the bills which the pamphlet professes to criticize, he would have discovered that the number of the lot in the tax maps is not used for any purpose whatever in the lot system, but that the lots on each block on the Land Register maps are numbered from one up.

Does the author of the pamphlet mean to state that the tax maps are in such a condition that the owner of a lot of ground cannot find that lot on the tax maps, its dimensions and distance from the corner, without the aid of a tax searcher?

This would be a statement of great practical importance to the tax searcher if it were accepted as true, but in fact it is utterly untrue and known so to be by every conveyancer in the city of New York.

And if the lots can be found on the tax maps, the Land Register maps can be started by copying from the tax maps, not the original lines of lots, not the lines of previous alteration, but the lines as they exist when the copying takes place, and this can be done without danger or confusion.

It is objected that the tax maps "would have to be examined by grantors every time a deed was made, because the numbering might have been changed." Had the author of the pamphlet read the bills, or if he read them had understood them, he would have known that the tax maps will *never* have to be examined by grantors but only the Land Register maps, which are entirely distinct from the tax maps; that the only changes which can be made in these must be made once a year and of a certain date in each year and that any change in the numbering of lots on the tax maps can have no possible effect on the Land Register maps.

The possible fraudulent alteration of the tax maps is referred to.

Suppose such a fraudulent alteration to be made, in what possible way does the author of this pamphlet imagine that such an act can affect a title or the working of the lot system?

Suppose John Smith's lot being correctly laid down on the tax map, somebody fraudulently alters it, does John Smith acquire title to any additional land, if his lot on the map has been fraudulently increased in size? Does he lose any land if his lot be fraudulently decreased in size? The lot system proposes a mere index, and if by any alteration in the lines of a lot—any persons property appears on a dia-

gram as included in more than one lot, it would simply be necessary that any subsequent deed should be directed to be indexed against each lot on the diagram shown to include any portion of it, in order to bring the deed to the notice of any one affected by it.

It is assumed by the pamphlet that there will be a large increase in alterations to be made on the tax maps. Why? Does not every purchaser of real estate, being owner, see to it now that the tax map corresponds to the lot he purchases or owns, in order that he may pay his taxes on what he owns and no more?

It is objected that no change in tax maps can be compelled under the act, except in the case therein specified, when a lot has been built upon or enclosed for two years, etc.

The answer is that there is no necessity for compulsion in any other case, anymore than now. Such transactions are continually taking place now, and alterations in the tax maps are made on production of deeds, without expense or difficulty. It is not absolutely essential that any changes should be compelled, in order to ensure the successful working of the lot system. If the map of a block on the Land Register does not show the diagram of the lots, according to the deeds of the lots, yet nevertheless, if every deed be indexed on the page of every lot on the diagram, which shows any portion of the area of the lot conveyed, the system would still work with success.

The author of this pamphlet expresses his opinion (he inadvertently uses the pronoun I at this point), that purchasers and conveyancers will not rely on these lot indices. If we knew who he was we might be able to accord to his name a respect which we cannot feel for the unintelligible statements which he advances in support of his belief.

We can only undertake to show very briefly why the lot index would be relied upon by those who will be called upon to rely upon it.

There is little or no danger that a man who brings a deed for record will designate the wrong lots for indexing it because he will be in possession of all the facts necessary for such designation, and it will be to his interest to make it correctly.

There will be little or no danger of error on the part of the clerk indexing it, because he has merely to follow a simple direction to index it on a certain page in a certain block.

Any possible danger in this direction is reduced to a mere nothing by the facts, 1st, that the register upon receipt of the instrument must enter the lot and block number on his ticket, and 2d, that the superintendent must endorse, on the deed when returned, a certificate stating against what lot and block it has been indexed.

There will be no danger of error in indexing names incorrectly because the index is against the property and not the name.

Conveyancers can safely rely upon the proper entry of an instrument on the index, and after such entry they no longer rely, as at present and as under the block system, upon clerks to find what instruments affect them, they find them themselves by mere inspection of the lot page.

The ignorance of the author of this pamphlet of his subject is shown still further when he says that if reliance is placed on the lot indices there would be as many instruments to examine as at present.

Under the present system in order to get the claim of title every instrument made by a person of the same name must be examined, while under the lot system only such instruments as would appear upon the page or pages of the lot or lots containing the area of the property under examination. The illustration of the Jumel estate as given is palpably absurd if intended as an argument against the lot system.

It it be true, as stated, that the Jumel property had but one number on the tax maps and appeared only as a tract, then it was property which would not be included in blocks, and under Sec. 14 of the Act, transfers of it would be kept in the alphabetical volume until such time as it should be laid down in the tax maps in blocks and lots.

When the pamphlet states as a minor objection, referring to "subsequent purchases," that nothing is said about such purchases being in good faith, etc., it shows that the author had only examined the line in the original printed report of the majority Commissioners of 1884, where there

are some clerical errors, and had not examined the bills now pending where he would have found the words "subsequent bona fide purchasers."

Indexing against adjoining lots the author thinks will alarm many people, especially ladies. We have only to say that as to any such indexing as is contemplated by the lot system—even the ladies who would be alarmed thereby would have to be of advanced age and impaired intellect, and the gentleman so alarmed would have to be in pretty much the same condition.

Does the author of the pamphlet mean to be understood that any acceptable system of local indexing must be one that ladies can use without the aid of a lawyer?

So much has been said on this subject of indexing against adjoining lots—in complete misunderstanding of the plain words and meaning of the lines that we will endeavor to make a plain statement on the subject, that even the anonymous pamphleteer may, if he will, understand. The designation of lots is for the purpose of putting the deed on a local index, a designation of the lots on a certain diagram (the Land Register Maps), which the deed is claimed to affect. No greater, no other claim is made than the deed makes itself. If the deed by its description encroaches on somebody's else land, that is a case of conflicting boundary lines raised by the deed and not by the index nor the designation, which merely says when the deed may be found. The deed and the deed only can make any claim of title. The objections stated in regard to raising money and in regard to the salary of the Superintendent being forfeited if the whole scheme is not in working order by July 1st, are made because the author has contented himself by reading the bills as presented to the *Legislature of 1884*. Had he read the bills presented to the *Legislature of 1885* and now pending, he would have seen that the bill now pending before the Legislature is not to go into effect till Sept. 1st, 1887—ample time to familiarize everyone with its provisions and for any needed amendment in matters of detail.

In reference to the objections to the bill concerning judgments, but little need be said beyond the already stated fact that the anonymous author does not know whereof he speaks.

He states that the judgment creditor will have to examine every page of the index of deeds in order to find what stands in his debtor's name, in face of the fact that the pending bills do not interfere with the continuation of the nominal indices and the express Statement of the Commissioners that this was done principally because of this bill to make judgments specific liens.

Inasmuch as no judgment creditors can sell a piece of real estate under execution until he finds it, there is no real and substantial reason why he should have a lien on it until he finds it any more than he has a lien on personal property until levy upon it.

Any cases of individual hardship by reason of such a law would be exceedingly rare and would be far more than counterbalanced by the relief to the public generally interested in real estate from the burden of making judgment searches and the risk of taking title when a judgment is docketted against some individual of the same name as some previous owner of the property.

The constitutionality of the provision as to existing judgments has been carefully examined. That provision affects the remedy and not the right, and is undoubtedly constitutional, and any possible harshness in its effect in a few cases ought not to weigh against it when its general importance to the many is regarded.

In its objections to the bill concerning taxes, the pamphlet quotes the suggestions of the Finance Department, heretofore published by the Committee on the Amendment of the Law of the Bar Association (which Committee reported unanimously in favor of the lot system.)

It needs only to be said in regard to these suggestions that they call attention to a mere oversight in naming the collector of the assessments and clerk of arrears as two persons, which error was perfectly harmless and as a matter of fact was corrected in the bill before its passage by the Senate and otherwise in stating that what is wanted is a complete set of books of account for each separate lot, etc., showing at a glance exactly what amount was due upon each lot, etc., the suggestions state precisely what the bill provides for, a fact, the correctness of which the merest inspection will show.

We are again furnished with a case of absolute dependence upon the tax searchers; we are told that they are the only persons who can do the work required by the time, and it is plainly intimated that they won't do so except for exorbitant salaries.

We think lawyers in New York City are quite satisfied that the work could be done within the prescribed time by competent persons and at a reasonable price.

We come lastly to the objections to bill for re-indexing.

We answer the question. What private records are referred to by saying that they are the private slips and abstracts claimed by searchers—without which searches could not be made to-day. Those claimed by Mr. Leaycraft in the County Clerk's office have been recently purchased by the city.

The success of a system of lot indexing for the future in no way depends upon the passage of this last named bill, but its passage in connection with the adoption of such system, would bring more speedy relief to the suffering real estate interests of the city. The Title Company aims to accomplish this very result for the benefit of its stockholders; it naturally opposes its accomplishment for the benefit of real estate owners.

We can see no reason in the present condition of things, the length of time required for procuring searches and their cost, why any one else should oppose such a measure. Such are in brief the practical objections of some one unknown.

We think no one understanding the subjects of which they treat can read them carefully without reaching the conclusion that they were written to serve the ends of some individual or corporation; that they disclose the utmost ignorance of the measures they oppose and that for the most part they seek to interpose petty objections to the success of a much needed reform.

NEW YORK, April 26, 1886.

Prepared by E. W. Coggeshall, one of the majority Commissioners of Land Transfer, at the request of the Real Estate Exchange.

A FEW FACTS IN REGARD TO THE LOT INDEXING BILLS NOW BEFORE THE LEGISLATURE.

1st. These bills were drawn and approved by four of the five commissioners of Land Transfer, all of which four were lawyers of practical experience in real estate practice.

2d. At the outset of the sessions of the commission, four of its members favored the *block* system.

3d. The *lot* system was finally adopted after long consideration and numerous discussions in and out of the commission meetings.

4th. Both systems were discussed by their advocates before a Special Committee of the Real Estate Exchange, composed of seven lawyers and three laymen, the lawyers on such committee, among others, being representatives of such conservative firms as Coudert Brothers, DeWitt, Lockman & DeWitt, and Martin & Smith. Some of these lawyers, at the beginning of the discussion, favored the block system, but the committee unanimously decided in favor of the *lot* system.

5th. Both systems were again discussed before the Committee on the Amendment of the Law of the Bar Association, which committee also unanimously decided in favor of the *lot* system.

6th. Memorials in favor of the *lot* systems have been signed by nearly all the prominent law firms in New York, doing a real estate business, and by no representative of the Title Guarantee and Trust Company.

7th. The protest against the lot system has been signed by a representative and director of the Title Company, Mr. Julian T. Davies, and by a few lawyers, most of whom have had little or no experience in real estate practice.

8th. It is understood that the Title Company has had a representative at Albany to oppose the passage of the lot system bills.

END OF
TITLE